IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1445 OF 2006

Kunda Bhalchandra Ashtekar. .. Petitioner.

vs.

Ramesh Krishna Shanbhag. . .. Respondent.

Mr. A.M. Kulkarni for petitioner.

CORAM : A.P. DESHPANDE, J.

DATE : 30th November, 2006.

P.C.

. The petitioner/plaintiff has instituted a suit for permanent injunction. In the said pending suit, various interlocutary orders are passed. One of the orders passed by this Court in revision permitted the defendant/tenant to carry out certain repairs. The same are carried out by appointing a Commissioner and under his supervision. At a later point of time, the petitioner moved an application seeking amendment of the plaint on the ground that the repairs that are carried out by the defendant go beyond what is permitted by the Court. Yet another suit is also filed by the petitioner claiming possession against the defendant and in the said suit one of the grounds raised by the petitioner, by

amending the plaint is raised in regard to carrying out repair without the consent and permission of the landlord. This very ground being the subject matter in the other suit, wherein possession is claimed by contending that the repairs/alterations are without permission of the landlord and beyond the scope of the repairs permitted by the Court, the application for amendment is rejected in this suit.

2. Taking an overall view of the matter and being of the view that if the proposed amendment is permitted the same would change the nature of the suit and would cause prejudice to the defendant, the trial court has rejected the application.

3. I do not see any reason to interfere with the impugned order. Hence, the writ petition is summarily rejected. However, it is made clear that it will be open for the petitioner to raise all the grounds that are raised in this petition in an appeal if and in case the petitioner’s suit is dismissed and he is required to file a regular appeal.

(A.P. Deshpande, J.)